

Ent 550119 Bk 1488 Pg 772 - 781
MARCY M. MURRAY, Recorder
WASATCH COUNTY CORPORATION
2024 Sep 13 04:50PM Fee: \$40.00 CO
For: Cottonwood Title Insurance Agency, In
ELECTRONICALLY RECORDED

WHEN RECORDED MAIL TO:

SDP REIT, LLC
Attn: Michael C. Nixon
1240 East 2100 South, Suite 300
Salt Lake City, Utah 84106

File No.: 143205-A-WHF

SUBORDINATION AGREEMENT

In Reference to Tax ID Number(s):

00-0021-6278, 00-0021-6495 and 00-0021-6496

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "**Agreement**") is entered into as of August 16, 2024, by and among SDP REIT, LLC, a Delaware limited liability company ("**SDP REIT**"), SDP FINANCIAL 2020, LP, a Delaware limited partnership ("**SDP 2020**," and together with SDP REIT, "**Senior lender**"), and CACHE PRIVATE CAPITAL DIVERSIFIED FUND, LLC, a Nevada limited liability company ("**Junior Lender**," and together with Senior Lender, the "**Lenders**").

A. Effective as of June 25, 2021, Benloch CPC, LLC, a Utah limited liability company and successor in interest to Cache Private Capital Diversified Fund, LLC ("**Borrower**"), made, executed and delivered to Senior Lender a certain Secured Promissory Note payable to Senior Lender in the original principal amount of \$16,866,036.00 (as amended, the "**Senior Note**").

B. Borrower and Lender subsequently entered into that certain Global Amendment, dated on or around October 1, 2021 ("**Prior Amendment #1**"), that certain Global Amendment #2, dated on or around August 1, 2022 ("**Prior Amendment #2**"), that certain Global Amendment #3, dated on or around December 23, 2022 ("**Prior Amendment #3**"), that certain Global Amendment #4, dated on or around October 1, 2023 ("**Prior Amendment #4**"), that certain Global Loan Modification Agreement dated June 28, 2024 ("**Prior Amendment #5**"), and that certain Global Loan Modification Agreement #2 dated July 31, 2024 ("**Prior Amendment #6**," and together with Prior Amendment #1, Prior Amendment #2, Prior Amendment #3, Prior Amendment #4, and Prior Amendment #5, the "**Prior Amendments**"), pursuant to which the Senior Note and all other Senior Lender Loan Documents (as defined below) were amended as set forth in such Prior Amendments.

C. Among other amendments to the Senior Lender Loan Documents made pursuant to the Prior Amendments, the maximum loan amount of the Senior Lender Loan Documents was increased to \$30,053,958.74.

D. The Senior Note is secured by, among other collateral, a (i) Trust Deed, Assignment of Rents, Security Agreement, and Financing Statement dated June 25, 2021 executed by Borrower as trustor, for the benefit of Senior Lender, as beneficiary (as amended and modified from time to time, the "**Senior Trust Deed**" which Senior Trust Deed, together with the Senior Note, and all other documents entered into in conjunction with the Senior Note, as amended and modified from time to time, are referred to herein as the "**Senior Lender Loan Documents**"), which Senior Trust Deed was recorded on June 25, 2021 in the official records of Wasatch County, Utah as Entry No. 502782. The Senior Trust Deed encumbers certain real property located in Wasatch County, Utah as more particularly described in the Senior Trust Deed and **Exhibit A** hereto (the "**Property**").

E. Effective as of July 28, 2022, Richard Bessey, an individual ("**Bessey**"), made, executed and delivered to Junior Lender a promissory note payable to Junior Lender in the original principal amount of \$10,000,000.00 (as amended, the "**Junior Note**").

F. Bessey's obligations under the Junior Note are secured by a Trust Deed dated July 28, 2022, and recorded in the official records of Wasatch County, Utah, on August 1, 2022 as Entry No. 522828 in Book 1418 at page 245 (the "**Junior Trust Deed**," and together with the Junior Note and all other documents entered into in conjunction with the Junior Note, the "**Junior Lender Loan Documents**," and the Junior Lender Loan Documents together with the Senior Lender Loan Documents, the "**Loan Documents**"), executed by Bessey, as trustor, for the benefit of Junior Lender, as beneficiary, and encumbering all or a portion of the Property, as more particularly described in the Junior Trust Deed.

G. As a condition to Senior Lender entering into Prior Amendment #6 with Borrower, and to establish priority with respect to the Property, Senior Lender and Junior Lender have agreed to enter into this Agreement whereby Junior Lender and Senior Lender shall establish their respective priorities as to their security interests in the Property.

NOW, THEREFORE, in consideration of the mutual agreements set out herein, the Lenders agree as follows:

1. Subordination. Junior Lender hereby subordinates the full amount of the Junior Note and all obligations owed to Junior Lender under the Junior Lender Loan Documents to the Senior Note and the other Senior Lender Loan Documents, including all extensions, renewals, amendments, modifications and refinancings of any such Senior Lender Loan Document. Moreover, regardless of any priority otherwise available to Junior Lender by law or by agreement, any security interest, lien, claim or right Junior Lender may now hold or hereafter acquire in all or any portion of the Property as well as any other real property or other collateral that is subject to the Senior Trust Deed or otherwise secures the Senior Note (including without limitation all assets of Borrower), including without limitation pursuant to the Junior Trust Deed, shall be and remain fully subordinated and junior for all purposes to the Senior Trust Deed and the other Senior Lender Loan Documents, including without limitation all liens, rights, and obligations created by or arising under the Senior Lender Loan Documents, including all modifications to and extensions thereof.
2. Junior Debt. Notwithstanding anything to the contrary in any Senior Lender Loan Documents or in any other agreement between Junior Lender and Bessey, including, without limitation, the Junior Note, Junior Lender will not demand, receive or accept any payment of any kind from Bessey in respect of the Junior Lender Loan Documents until either (a) the Senior Note has been paid in full, or (b) Senior Lender notifies Junior Lender in writing that it may receive payments under the Junior Lender Loan Documents.
3. Receipt of Unauthorized Payments. In the event that Junior Lender shall receive any payment pursuant to its Junior Lender Loan Documents or otherwise which Junior Lender is not entitled to receive under the provisions of the foregoing Section 2, Junior Lender will hold the amount so received in trust for Senior Lender and will forthwith turn over such payment to Senior Lender in the form received (except for the endorsement of Junior Lender where necessary) for application to the Senior Note (whether due or not due), in such manner of application as Senior Lender may deem appropriate. In the event of the failure of Junior Lender to make any endorsement required under this Agreement, Senior Lender, or any of its officers or employees on behalf of Senior Lender, is hereby

irrevocably appointed as attorney-in-fact (which appointment is coupled with an interest) for Junior Lender to make the same in Junior Lender's name.

4. Actions Regarding the Property. Except as expressly authorized by the provisions of this Agreement, Junior Lender will not accelerate the maturity of the Junior Note, commence any action or proceeding against Bessey to recover all or any part of any unpaid amount under the Junior Lender Loan Documents, exercise or enforce any right or remedy against Bessey or the Property, or join with any creditor (unless Senior Lender shall so join) in bringing any proceedings against Bessey, Borrower, or the Property under any bankruptcy, reorganization, readjustment of debt, arrangement of debt, receivership, liquidation or insolvency law or statute of the federal or any state government, unless and until the Senior Note has been paid in full. Moreover, Junior Lender shall not have a right to take any action with respect to the Property, whether by judicial or non-judicial foreclosure, notification to Bessey's account debtors, the seeking of the appointment of a receiver for any portion of Bessey's assets, setoff, or otherwise, unless and until the Senior Note has been fully paid. Finally, Junior Lender agrees to not object to or take any action to delay or hinder in any way any proposed sale of the Property to which Senior Lender has consented, so long as such sale is an arms'-length transaction or for fair market value (if not an arms'-length transaction). If Junior Lender, in contravention of the terms of this Agreement, shall commence, prosecute, or participate in any suit, action, or proceeding against Bessey or initiate any foreclosure sale or proceeding or any other action to enforce its lien on any of the Property, or take any action whatsoever to object to, hinder or delay any sale of the Property approved by Senior Lender (provided such sale is at arms'-length or for fair market value (if not an arms'-length transaction)), then Bessey may interpose as a defense or plead the making of this Agreement, and Senior Lender may intervene and interpose such defense or plea in its name or in the name of Bessey, as applicable. If Junior Lender, in contravention of the terms of this Agreement, shall attempt to enforce any remedies prohibited by this Agreement, then Senior Lender may, by virtue of this Agreement, restrain the enforcement thereof in the name of Senior Lender or in the name of Bessey.

5. Representations of the Lenders. Each Lender warrants, covenants and represents to the other Lender that: (a) it is the owner of its respective debt made by Bessey or Borrower, as applicable, free and clear of the claims of any other party; (b) Neither Bessey nor Borrower owes any indebtedness to such Lender except the indebtedness evidenced by such Lender's respective Loan Documents; (c) it is the beneficiary or lender named on all Loan Documents and other documents recorded with the Wasatch County, Utah Recorder's Office or entered into with Bessey or Borrower with respect to the Property; and (d) it will not, at any time while this Agreement is in effect, assign any of its liens against the Property to any entity or person which does not agree in a writing, satisfactory in form and substance to the other Lender (the "**Property Transfer Document**"), to become a party hereto and to succeed to the rights and to be bound by all of the obligations of the transferring Lender hereunder (in the case of any such proposed disposition by a Lender, it will notify the other Lender at least ten (10) days prior to the date of any of such intended disposition and include with such notice a copy of the proposed Property Transfer Document).

6. Modifications of Loan Documents. Each Lender agrees that the other Lender may modify any terms of its respective Loan Documents; *provided, however,* that notwithstanding anything to the contrary in this Agreement, Junior Lender may not make

any amendment to any of the Junior Lender Loan Documents that results in an increase in the balance or obligations owed to Junior Lender under the Junior Lender Loan Documents without Senior Lender's prior written consent. No such modification shall in any way impair the priority of the Senior Lender Loan Documents hereunder.

8. Remedies. Any breach hereof is likely to cause irreparable damage to the aggrieved party. Therefore, the relief to which such party shall be entitled in such event shall include, but not be limited to: (a) a mandatory injunction for specific performance, (b) judicial relief to prevent a violation of any of the provisions of this Agreement, (c) damages, and (d) any other relief to which it may be entitled at law or in equity.

9. Miscellaneous. If there are any legal proceedings arising out of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and disbursements, in addition to any other relief to which such party may be entitled. This Agreement shall be binding on and inure to the benefit of the respective successors, heirs and assigns of the parties hereto. If any one of the provisions contained in this Agreement, for any reason, shall be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall remain in full force and effect and be construed as if the invalid, illegal or unenforceable provision had never been contained herein. This Agreement is governed by the internal laws of the State of Utah without reference to choice of law rules. Each party hereto agrees to submit to the exclusive jurisdiction of Salt Lake County, Utah in the event of any litigation involving this Agreement. The parties hereto hereby agree to execute any and all other further documents, agreements, or instruments and to take such other steps as from time to time are necessary in order to effectuate the purposes of the foregoing. This Agreement may be signed in counterparts and by signature sent by facsimile, each of which shall be deemed to be an original, and all of which together shall constitute one and the same binding document. This Agreement may not be amended or waived except in a writing executed by the party against which such amendment or waiver is sought to be enforced. No course of dealing between or among any persons having any interest in this Agreement will be deemed effective to modify or amend any part of this Agreement or any rights or obligations of any person under or by reason of this Agreement.

[SIGNATURE PAGE ON NEXT PAGE]

[SIGNATURE PAGE OF SENIOR LENDER]

SENIOR LENDER:

SDP REIT, LLC,
a Delaware limited liability company

By: [Signature]
Name: ANDREW PETERSON
Title: AUTHORIZED SIGNATORY

ACKNOWLEDGMENT

STATE OF Utah)
COUNTY OF Garfield)

The foregoing instrument was acknowledged before me this 12 day of August, 2024, by Andrew Peterson, as Authorized Signatory of SDP REIT, LLC, a Delaware limited liability company, on behalf of said company.



[Signature]
Notary Public for State of Utah
My Commission expires: 4/11/26

[SIGNATURE PAGE OF SENIOR LENDER]

SENIOR LENDER:

SDP FINANCIAL 2020, LP,
a Delaware limited partnership

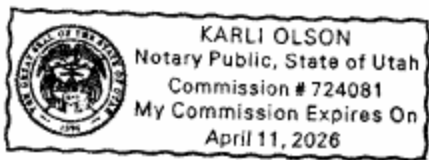
By: Sundance Bay Debt Partners GP, LLC
a Delaware limited liability company, its
General Partner

By: [Signature]
Name: ANDREW PETERSON
Title: AUTHORIZED SIGNATORY

ACKNOWLEDGMENT

STATE OF UTAH)
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 22 day of August, 2024, by Andrew Peterson, as Authorized Signer of SDP FINANCIAL 2020, LP, a Delaware limited partnership, on behalf of said company.



[Signature]
Notary Public for Karli Olson
My Commission expires: 4/11/26

[SIGNATURE PAGE OF JUNIOR LENDER]

JUNIOR LENDER:

CACHE PRIVATE CAPITAL DIVERSIFIED FUND, LLC, a Nevada limited liability company

By: Cache Private Capital Management, LLC, its manager

By: *[Signature]*
D. Sean Clark, Manager

By: _____
Kellen Jones, Manager

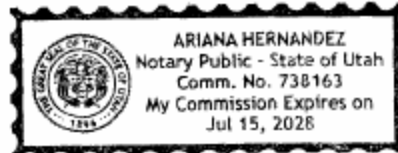
ACKNOWLEDGMENTS

STATE OF UTAH)
)
COUNTY OF Utah)

The foregoing instrument was acknowledged before me this 19 day of August, 2024, by D. Sean Clark, as a manager of Cache Private Capital Management, LLC, the manager of CACHE PRIVATE CAPITAL DIVERSIFIED FUND, LLC, a Nevada limited liability company, on behalf of said company.

[Signature]
Notary Public for *[Signature]* Utah
My Commission expires: July 15, 2028

STATE OF UTAH)
)
COUNTY OF _____)



The foregoing instrument was acknowledged before me this _____ day of August, 2024, by Kellen Jones, as a manager of Cache Private Capital Management, LLC, the manager CACHE PRIVATE CAPITAL DIVERSIFIED FUND, LLC, a Nevada limited liability company, on behalf of said company.

Notary Public for _____
My Commission expires: _____

[SIGNATURE PAGE OF JUNIOR LENDER]

JUNIOR LENDER:

CACHE PRIVATE CAPITAL DIVERSIFIED FUND, LLC, a Nevada limited liability company

By: Cache Private Capital Management, LLC, its manager

By: _____
D. Sean Clark, Manager

By:  _____
Kellen Jones, Manager

ACKNOWLEDGMENTS

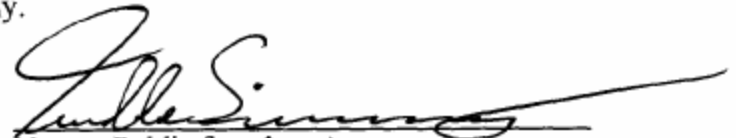
STATE OF UTAH)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of August, 2024, by D. Sean Clark, as a manager of Cache Private Capital Management, LLC, the manager of CACHE PRIVATE CAPITAL DIVERSIFIED FUND, LLC, a Nevada limited liability company, on behalf of said company.

Notary Public for _____
My Commission expires: _____

STATE OF ^{Nevada} ~~UTAH~~)
)
COUNTY OF Clark)

The foregoing instrument was acknowledged before me this 19th day of August, 2024, by Kellen Jones, as a manager of Cache Private Capital Management, LLC, the manager CACHE PRIVATE CAPITAL DIVERSIFIED FUND, LLC, a Nevada limited liability company, on behalf of said company.



Notary Public for County of Clark
My Commission expires: August 22, 2027

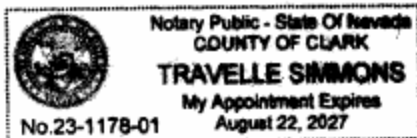


EXHIBIT A

DESCRIPTION OF THE REAL PROPERTY

THE LAND REFERRED TO HEREIN IS SITUATED IN WASATCH COUNTY, UTAH, AND IS DESCRIBED AS FOLLOWS:

PART OF SECTION 1, TOWNSHIP 3 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SECTION 1, TOWNSHIP 3 SOUTH, RANGE 5 EAST (SAID NORTHEAST CORNER OF SECTION 1 BEING N89°31'27"E 16027.88 FEET FROM THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 2 SOUTH, RANGE 5 EAST AND BEING THE BASIS OF BEARINGS FOR THIS PROJECT); THENCE S01°18'39"E 2563.63 FEET; THENCE N62°48'28"W 354.89 FEET; THENCE N72°16'42"W 552.74 FEET; THENCE S64°46'26"W 220.52 FEET; THENCE S38°18'23"W 494.94 FEET; THENCE S67°20'38"W 1125.22 FEET; THENCE N90°00'00"W 227.79 FEET; THENCE N37°42'12"W 163.59 FEET; THENCE N01°06'44"E 404.26 FEET; THENCE N16°50'21"W 394.58 FEET; THENCE N52°14'52"W 346.35 FEET; THENCE N01°09'16"E 1673.29 FEET; THENCE N00°38'10"E 60.11 FEET; THENCE N05°05'03"E 269.83 FEET; THENCE N89°33'35"E 310.29 FEET; THENCE N89°33'13"E 2667.85 FEET TO THE POINT OF BEGINNING.